

U. S. COURTS

AUG - 9 2004

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DICK E. BUTCHER,

Defendant.

Case No. CR 04-0064-S-EJL

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 A. **Summary of Terms.** Pursuant to Rule 11(c)(1)(A) of the Federal Rules of  
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government<sup>1</sup> agree that  
4 the defendant will plead guilty to Count Thirty-two of the Indictment. The defendant  
5 acknowledges that the plea is voluntary and did not result from force, threats, or promises, other  
6 than any promise made in this plea agreement. More specifically, the parties agree as follows:

7 Count Thirty-two charges the defendant with Mail Fraud, in violation of Title 18, United  
8 States Code Section 1341.

9 B. **Acceptance.** Upon acceptance of the defendant's guilty pleas, and the defendant's  
10 full compliance with the other terms of this Agreement, the Government agrees that it will dismiss,  
11 under Rule 11(c)(1)(A), the remaining Counts of the Indictment in which he is charged.  
12 Defendant acknowledges, agrees and waives objection to the fact that the Court may consider  
13 "relevant conduct" in arriving at an appropriate sentence pursuant to Section 1B1.3 of the  
14 Sentencing Guidelines. This would include dismissed counts and uncharged conduct of a similar  
15 nature.

16 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

17 Defendant understands that he will be placed under oath at the plea hearing and that the  
18 government, in a prosecution for perjury or false statement, has the right to use against the  
19 defendant any statement that the defendant gives under oath. Moreover, the defendant understands  
20 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged  
21 against the defendant and to persist in that plea; 2) the right to a trial by jury; 3) the right to be  
22 represented by counsel, and if necessary, to have the court appoint counsel at trial and at every  
23 stage of the proceeding; and 4) the rights, at trial, to confront and cross-examine adverse  
24 witnesses, to be protected from compelled self-incrimination, to testify, to present evidence and to  
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26 <sup>1</sup>The word "Government" in this Agreement refers to the United States Attorney for the District of Idaho.  
27

1 compel the attendance of witnesses. The defendant understands that by pleading guilty he waives  
2 (gives up) all of the rights set forth above. The defendant fully understands that by entering a plea  
3 of guilty, if that plea is accepted by the District Court, there will be no trial and defendant will  
4 have waived (given up) these trial rights.

### 5 **III. NATURE OF THE CHARGES**

6 A. **Elements of the Crime.** The elements of the crime of Mail Fraud, as charged in  
7 Count Thirty-two is as follows:

8 First, the defendant made up a scheme or plan for obtaining money or property by making  
9 false promises or statements, with all of the jury agreeing on at least one particular false promise or  
10 statement that was made;

11 Second, the defendant knew that the promises or statements were false;

12 Third, the promises or statements were material, that is they would reasonably influence a  
13 person to part with money or property;

14 Fourth, the defendant acted with intent to defraud; and

15 Fifth, the defendant used, or caused to be used, the mails to carry out or attempt to carry  
16 out an essential part of the scheme.

17 B. **Factual Basis.** If this matter were to proceed to trial, the Government and the  
18 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts  
19 accurately represent the defendant's readily provable offense conduct. This factual summary is not  
20 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be  
21 determined by the Court after its consideration of the Presentence Report.

22 As to Count Thirty-two, Mr. and Mrs. Kendall entered into a pre-arranged funeral service  
23 contract on April 26, 1998 with the defendant, Dick E. Butcher doing business as Riverside Funeral  
24 Service. By this agreement the defendant, Dick E. Butcher, agreed to provide funeral services for  
25 Mr. and Mrs. Kendall and that monies paid for said services would be deposited into a trust fund  
26 in accordance with state law. The total charges for said services were \$850.00 per person, a total  
27

1 of \$1,700.00, and the monies were paid in full. Subsequently, documents were submitted by  
2 Riverside to Mr. and Mrs. Kendall through the United States Postal Service. The funds received by  
3 Dick Butcher from Mr. and Mrs. Kendall were not deposited into a trust account, but were  
4 misapplied by the defendant to his personal use.

## 5 **SENTENCING FACTORS**

6 A. **Maximum Penalties.** A violation of Mail Fraud, as charged in Count Sixty, is  
7 punishable by a term of imprisonment of twenty (20) years, a term of supervised release of not  
8 more than three (3) years, a maximum fine of \$250,000.00, and a special assessment of \$100.00.

9 B. **Supervised Release.** Defendant will be sentenced to a term of supervised release,  
10 to be served after incarceration, of not more than three (3) years.

11 The defendant's term of supervised release will be a specific (i.e., a determinate) term  
12 chosen by the Court at sentencing. The combination of prison time and supervised release is  
13 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that  
14 defendant is pleading guilty to violating. Violation of any condition of supervised release may  
15 result in defendant being imprisoned for the entire term of supervised release or being prosecuted  
16 for contempt of court under Title 18, United States Code, Section 401(3).

17 C. **Fines and Costs.** Unless the Court determines that the defendant will not  
18 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's  
19 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The  
20 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised  
21 release.

22 D. **Special Assessment.** Defendant will pay a special assessment of \$100.00 per  
23 count, in addition to any fine imposed. This assessment will be paid by defendant before sentence  
24 is imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the  
25 United States District Court, Clerk's Office, Federal Building and United States Courthouse, 550  
26 W. Fort Street, Fourth Floor, Boise, ID 83724.

1 E. **Restitution.** In addition to any fine or costs imposed, the Court pursuant to  
2 Title 18, United States Code, Sections 3563(b)(3), 3583, 3663 and 3664, and Section 5E1.1 of the  
3 Sentencing Guidelines, shall order defendant to pay restitution in an amount equal to the loss  
4 caused to all of the victims of the offenses charged in the Indictment that is attributable to his  
5 conduct of approximately \$16,670.00. The defendant agrees that he is responsible to pay  
6 restitution to all of the victims of the fraud attributable to his conduct, including all of those  
7 alleged in the Indictment and not solely for those counts to which he is pleading guilty, as well as,  
8 victims who are not alleged in the Indictment. The defendant should be given credit for all  
9 restitution monies paid by Mardi Skinner of approximately \$1,820.00.

10 **V. UNITED STATES SENTENCING GUIDELINES:**

11 A. **Application of Sentencing Guidelines.** Defendant understands that defendant will  
12 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been  
13 determined by the District Judge; (2) any estimate of the likely sentence received from any source  
14 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what  
15 the sentence will be. The defendant also understands that the Court will determine the applicable  
16 sentencing factors at sentencing and that the Court's determination will affect the sentence range  
17 under the Sentencing Guidelines. While the Court may take the defendant's cooperation and the  
18 recommendations of the parties into account in determining the sentence to be imposed, the Court  
19 has complete discretion to impose a sentence other than the sentence recommended, including the  
20 maximum sentence possible for the crimes to which defendant has pled.

21 B. **Waiver of Rights under *Blakely v. Washington*.** As consideration for the  
22 benefits conferred by this guilty plea, the defendant specifically waives his *Apprendi* rights, that  
23 every fact which is legally essential to punishment be charged in the indictment and proven to a  
24 jury, and consents to judicial fact-finding with respect to any sentencing enhancements, following  
25 the procedures described in the United States Sentencing Commission Guideline Manual.  
26  
27

1           C.     **Sentencing Guidelines Recommendations and Requests.**

2                 1.     **Acceptance of Responsibility.** Unless the Government learns of new  
3 information to the contrary, defendant will be entitled to a reduction of two levels in the combined  
4 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant  
5 clearly accepts responsibility for the offense. The Government will move for an additional one-  
6 level reduction in the combined offense level under section 3E1.1(b) if the following conditions  
7 are met: the defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or  
8 greater; and the defendant has assisted authorities in the investigation or prosecution of  
9 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea  
10 of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to  
11 allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant fails  
12 to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner  
13 inconsistent with acceptance of responsibility, the Government will not make such a  
14 recommendation and/or motion or, if one has already been made, it will withdraw the  
15 recommendation and/or motion.

16                 2.     **Amount of Loss.** The parties agree that the amount of loss attributable to  
17 the defendant is less than \$10,000.00.

18                 3.     **Stipulation by Parties.**         The parties further agree that the defendant  
19 should be sentenced at an offense level of 10, pursuant to the November 1, 1998, Sentencing  
20 Guidelines, calculated as follows: Section 2F1.1, Base Offense Level 6, upward adjustment of 2  
21 for more than \$5,000.00, upward adjustment of 2 for more than minimal planning, upward  
22 adjustment of 2 under Section 3 A 1.1, for vulnerable victims, and less 2 points for acceptance of  
23 responsibility.

24                 4.     **Downward Departure Request by Defendant.** The defendant will not  
25 seek a downward departure unless grounds are identified in this Agreement, or if the grounds did  
26 not exist prior to the defendant's guilty plea..  
27

1 **VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

2 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant  
3 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the  
4 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all  
5 appeal rights defendant may have regarding both defendant's conviction and sentence, including  
6 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,  
7 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect  
8 application of the sentencing guidelines to which the defendant filed a proper and timely objection.  
9

10 The defendant is also aware that under certain circumstances a defendant has the right to  
11 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to  
12 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms  
13 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to  
14 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any  
15 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal  
16 claiming ineffective assistance of counsel based upon facts discovered after the entry of  
17 defendant's guilty pleas.

18 The defendant further understands that nothing in this Plea Agreement shall affect the  
19 Government's right and/or duty to appeal as set forth in Title 18, United States Code,  
20 Section 3742(b).

21 **VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

22 The defendant agrees to provide all material financial and other information as may be  
23 requested by a representative of the United States Probation Office for use in preparing a  
24 Presentence Report. Failure to execute releases and/or provide such material information as may  
25 be required is a violation of the terms of this Agreement, and will relieve the Government of its  
26 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under  
27



1 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the  
2 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for  
3 withdrawing the plea of guilty.

4 **VIII. NO RIGHT TO WITHDRAW PLEA**

5 The defendant understands that the Court is not bound to follow any recommendations or  
6 requests made by the parties at the time of sentencing. If the Court decides not to follow any of the  
7 parties recommendations or requests, the defendant cannot withdraw from this plea agreement or  
8 the guilty plea.

9 **IX. CONSEQUENCES OF VIOLATING AGREEMENT**

10 A. **Government's Options.** If defendant fails to keep any promise in this Agreement,  
11 including any promise to cooperate, or commits a new crime, the Government is relieved of any  
12 obligation not to prosecute defendant on other charges, including any charges dismissed as part of  
13 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the  
14 Government determines after sentence is imposed under this Agreement that defendant's breach of  
15 the Agreement warrants further prosecution, the Government will have the choice between letting  
16 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such  
17 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it  
18 may withdraw from the Plea Agreement in its entirety.

19 B. **Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep  
20 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in  
21 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed  
22 under this Agreement; (2) any right under the Constitution and laws of the United States to be  
23 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's  
24 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of  
25 limitations period for any charge that is brought as a result of defendant's failure to keep this  
26 Agreement, and on which the statute of limitations expired after defendant entered into this  
27

1 Agreement.

2 Furthermore, the defendant further understands and agrees that if defendant does not enter a  
3 valid and acceptable plea, the Government will move to continue the trial now set. The defendant  
4 agrees not to contest such a continuance, and agrees that the resulting delay would be excludable  
5 time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or (h)(8)(A). This  
6 continuance will be necessary to allow the Government adequate time to prepare for trial.

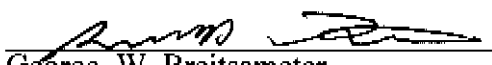
7 **X. MISCELLANEOUS**

8 A. **No Other Terms.** This Agreement incorporates the complete understanding  
9 between the parties, and no other promises have been made by the Government to the defendant or  
10 to the attorney for the defendant. Unless an exception to this paragraph is explicitly set forth  
11 elsewhere in this document, this Agreement does not bind or obligate governmental entities other  
12 than the United States Attorney's Office for the District of Idaho. If requested to do so by the  
13 defendant or defendant's counsel, the Government will bring the defendant's cooperation and pleas  
14 to the attention of other prosecuting authorities.

15  
16 **UNITED STATES' APPROVAL**

17 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States  
18 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

19  
20 THOMAS E. MOSS  
21 UNITED STATES ATTORNEY  
22 By:


23   
24 George W. Breitsameter  
25 Assistant United States Attorney

26  
27  
DATE

8/8/04

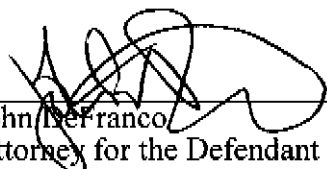
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2 **XII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

3 A. I have read and carefully reviewed every part of this Plea Agreement with my  
4 attorney. I understand the Agreement and its effect upon the potential sentence. Furthermore, I  
5 have discussed all of my rights with my attorney and I understand those rights. No other promises  
6 or inducements have been made to me, directly or indirectly, by any agent of the Government,  
7 including any Assistant United States Attorney, concerning any plea to be entered in this case. In  
8 addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from  
9 doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am  
10 satisfied with my attorney's advice and representation in this case.

11  
12   
13 Dick E. Butcher  
Defendant

DATE 8/8/04

1 B. I have read this Plea Agreement and have discussed the contents of the agreement  
2 with my client. The Plea Agreement accurately and completely sets forth the entirety of the  
3 agreement. I concur in my client's decision to plead guilty as set forth above.

4  
5   
6 John DeFranco  
Attorney for the Defendant

8/7/04  
DATE